

SENATE BILL 628

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8lr1117

By: **Senators Jacobs, Colburn, Harris, and Munson**

Introduced and read first time: February 1, 2008

Assigned to: Judicial Proceedings

A BILL ENTITLED

1 AN ACT concerning

2 **Criminal Procedure – Legal Residency Status – Sentencing and Parole**
3 **Considerations**

4 FOR the purpose of authorizing a hearing examiner or commissioner determining
5 whether an inmate is suitable for parole, or the Maryland Parole Commission
6 before entering into a predetermined parole release agreement, to consider
7 whether the prisoner is lawfully present in the United States under federal law;
8 authorizing an examiner, commissioner, or the Commission to make inquiry
9 into whether a certain prisoner would be legally subject to deportation from the
10 United States while on parole; authorizing an examiner, commissioner, or the
11 Commission to decline parole based on certain considerations; authorizing a
12 court in determining whether to suspend all or any part of a sentence of
13 confinement or place a defendant on probation in a criminal case, to make
14 inquiry into whether the person to be sentenced or placed on probation is
15 lawfully present in the United States under federal law; authorizing the court to
16 make inquiry into whether the person to be sentenced or placed on probation
17 would be legally subject to deportation from the United States while on a
18 suspended sentence or probation; authorizing the court to decline to suspend a
19 sentence or place a defendant on probation based on certain considerations; and
20 generally relating to legal residence, sentencing, and parole.

21 BY repealing and reenacting, with amendments,
22 Article – Correctional Services
23 Section 7–305
24 Annotated Code of Maryland
25 (1999 Volume and 2007 Supplement)

26 BY adding to
27 Article – Criminal Procedure
28 Section 6–233
29 Annotated Code of Maryland

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 (2001 Volume and 2007 Supplement)

2 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
3 MARYLAND, That the Laws of Maryland read as follows:

4 **Article – Correctional Services**

5 7–305.

6 (A) Each hearing examiner and commissioner determining whether an
7 inmate is suitable for parole, and the Commission before entering into a
8 predetermined parole release agreement, shall consider:

9 (1) the circumstances surrounding the crime;

10 (2) the physical, mental, and moral qualifications of the inmate;

11 (3) the progress of the inmate during confinement, including the
12 academic progress of the inmate in the mandatory education program required under
13 § 22–102 of the Education Article;

14 (4) a report on a drug or alcohol evaluation that has been conducted on
15 the inmate, including any recommendations concerning the inmate’s amenability for
16 treatment and the availability of an appropriate treatment program;

17 (5) whether there is reasonable probability that the inmate, if released
18 on parole, will remain at liberty without violating the law;

19 (6) whether release of the inmate on parole is compatible with the
20 welfare of society;

21 (7) an updated victim impact statement or recommendation prepared
22 under § 7–801 of this title;

23 (8) any recommendation made by the sentencing judge at the time of
24 sentencing;

25 (9) any information that is presented to a commissioner at a meeting
26 with the victim; and

27 (10) any testimony presented to the Commission by the victim or the
28 victim’s designated representative under § 7–801 of this title.

29 (B) (1) **EACH HEARING EXAMINER AND COMMISSIONER**
30 **DETERMINING WHETHER AN INMATE IS SUITABLE FOR PAROLE, AND THE**
31 **COMMISSION BEFORE ENTERING INTO A PREDETERMINED PAROLE RELEASE**

1 AGREEMENT, MAY CONSIDER WHETHER THE PRISONER IS LAWFULLY PRESENT
2 IN THE UNITED STATES UNDER FEDERAL LAW.

3 (2) IF THE EXAMINER, COMMISSIONER, OR THE COMMISSION
4 DETERMINE THAT THE PRISONER IS NOT LAWFULLY PRESENT IN THE UNITED
5 STATES, THE EXAMINER, COMMISSIONER, OR THE COMMISSION MAY MAKE
6 INQUIRY INTO WHETHER THE PRISONER WOULD BE LEGALLY SUBJECT TO
7 DEPORTATION FROM THE UNITED STATES WHILE ON PAROLE.

8 (3) IF THE EXAMINER, COMMISSIONER, OR THE COMMISSION
9 DETERMINES THAT THE PRISONER WOULD BE LEGALLY SUBJECT TO
10 DEPORTATION FROM THE UNITED STATES WHILE ON PAROLE, THE EXAMINER,
11 COMMISSIONER, OR THE COMMISSION MAY:

12 (I) CONSIDER THE INTEREST OF THE STATE IN SECURING
13 CERTAIN AND COMPLETE EXECUTION OF JUDICIAL SENTENCES IN CRIMINAL
14 CASES;

15 (II) CONSIDER THE LIKELIHOOD THAT DEPORTATION MAY
16 INTERVENE TO FRUSTRATE THE STATE INTEREST IN CERTAIN AND COMPLETE
17 EXECUTION OF SENTENCES IF PAROLE IS GRANTED; AND

18 (III) WHERE APPROPRIATE, DECLINE TO GRANT PAROLE IN
19 FURTHERANCE OF THE STATE INTEREST IN CERTAIN AND COMPLETE
20 EXECUTION OF SENTENCES.

21 **Article - Criminal Procedure**

22 **6-233.**

23 (A) IN DETERMINING WHETHER TO SUSPEND ALL OR ANY PART OF A
24 SENTENCE OF CONFINEMENT OR TO PLACE A DEFENDANT ON PROBATION IN A
25 CRIMINAL CASE, THE COURT MAY MAKE INQUIRY INTO WHETHER THE PERSON
26 TO BE SENTENCED OR PLACED ON PROBATION IS LAWFULLY PRESENT IN THE
27 UNITED STATES UNDER FEDERAL LAW.

28 (B) IF THE COURT DETERMINES THAT THE PERSON TO BE SENTENCED
29 OR PLACED ON PROBATION IS NOT LAWFULLY PRESENT IN THE UNITED STATES,
30 THE COURT MAY MAKE INQUIRY INTO WHETHER THE PERSON TO BE SENTENCED
31 OR PLACED ON PROBATION WOULD BE LEGALLY SUBJECT TO DEPORTATION
32 FROM THE UNITED STATES WHILE ON A SUSPENDED SENTENCE OR PROBATION.

33 (C) IF THE COURT DETERMINES THAT THE PERSON TO BE SENTENCED
34 OR PLACED ON PROBATION WOULD BE LEGALLY SUBJECT TO DEPORTATION

1 FROM THE UNITED STATES WHILE ON A SUSPENDED SENTENCE OR PROBATION,
2 THE COURT MAY:

3 (1) CONSIDER THE INTEREST OF THE STATE IN SECURING
4 CERTAIN AND COMPLETE EXECUTION OF JUDICIAL SENTENCES IN CRIMINAL
5 CASES;

6 (2) CONSIDER THE LIKELIHOOD THAT DEPORTATION MAY
7 INTERVENE TO FRUSTRATE THE STATE INTEREST IN CERTAIN AND COMPLETE
8 EXECUTION OF THE SENTENCES IF A SUSPENDED SENTENCE OR PROBATION IS
9 GRANTED; AND

10 (3) WHERE APPROPRIATE, DECLINE TO SUSPEND A SENTENCE OR
11 PLACE THE DEFENDANT ON PROBATION IN FURTHERANCE OF THE STATE
12 INTEREST IN CERTAIN AND COMPLETE EXECUTION OF SENTENCES.

13 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
14 October 1, 2008.